

**Letter of Findings: 04-20191477
Gross Retail Tax
For the Year 2016**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

California residents were required to pay Indiana use tax for a trailer purchased in Indiana. California does not have sales tax reciprocity with Indiana for trailer purchases.

ISSUE

I. Gross Retail and Use Tax - Recreational Vehicle Sales.

Authority: IC § 6-2.5-2-1; IC §6-2.5-3-1; IC § 6-2.5-3-2; IC § 6-8.1-5-1; *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Rhoads v. Indiana Dep't of State Revenue*, 774 N.E.2d 1044 (Ind. Tax Ct. 2002); *USAir, Inc. v. Indiana Dep't of State Revenue*, 623 N.E.2d 466 (Ind. Tax Ct. 1993); Sales Tax Information Bulletin 28S (April 2012).

Taxpayers argue that the Department erred in assessing tax on the sales of a trailer they purchased in Indiana and registered in California.

STATEMENT OF FACTS

Taxpayers are California residents who purchased a travel trailer in Indiana in August 2016. At the time of purchase, a ST-137RV affidavit was filled out and signed, claiming that the vehicle was exempt from Indiana sales tax. Taxpayers registered the trailer later that month with the State of California and paid use tax to California at that time. The Indiana Department of Revenue ("Department") reviewed the trailer sale transaction in 2019 and determined that the Taxpayers owed use tax on their purchase of the trailer. The Department issued proposed assessments for use tax, penalty, and interest. Taxpayers protested these assessments and a telephonic administrative hearing was conducted during which Taxpayers explained the basis for their protest. This Letter of Findings results.

I. Gross Retail and Use Tax - Recreational Vehicle Sales.

DISCUSSION

Taxpayers claim that they do not owe tax to Indiana for their trailer purchase because it was an exempt transaction, with the trailer being taken to California for registration. Taxpayers paid use tax in California at the time of registration, and believe that these proposed assessments constitute impermissible double taxation.

As a threshold issue, it is the Taxpayers' responsibility to establish that the existing use tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Thus, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana. IC § 6-2.5-2-1(a). Indiana also imposes a complementary excise tax called "the use tax" on "the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction." IC § 6-2.5-3-2(a). Use means the "exercise of any right or power of ownership over tangible personal property." IC § 6-2.5-3-1(a). The use tax is functionally equivalent to the sales tax. See *Rhoads v. Indiana Dep't of State Revenue*, 774 N.E.2d 1044, 1047 (Ind. Tax Ct. 2002).

By complementing the sales tax, the use tax ensures that non-exempt retail transactions (particularly out-of-state retail transactions) that escape sales tax liability are nevertheless taxed. *Id.* at 1048; *USAir, Inc. v. Indiana Dep't of State Revenue*, 623 N.E.2d 466, 469 (Ind. Tax Ct. 1993). The use tax ensures that, after such goods arrive in Indiana, the retail purchasers of the goods bear their fair share of the tax burden.

IC §6-2.5-5-39(c) provides an exemption from tax for purchases of cargo trailers and recreational vehicles if:

- (1) the purchaser is a nonresident;
- (2) upon receiving delivery of the cargo trailer or recreational vehicle, the person transports it within thirty (30) days to a destination outside Indiana;
- (3) the cargo trailer or recreational vehicle will be titled or registered for use in another state or country;
- (4) the cargo trailer or recreational vehicle will not be titled or registered for use in Indiana; *and*
- (5) *the cargo trailer or recreational vehicle will be titled or registered in a state or country that provides an exemption from sales, use, or similar taxes imposed on a cargo trailer or recreational vehicle that is purchased in that state or country by an Indiana resident and will be titled or registered in Indiana.*

(*Emphasis added*).

Sales Tax Information Bulletin 28S (April 2012), 20120530 Ind. Reg. 045120259NRA, further explains these requirements:

A full exemption is applicable to the purchase of a recreational vehicle (RV) or a cargo trailer by a NONRESIDENT, if the purchaser affirms the purchase will be registered/titled within 30 days in a reciprocal state or country. A reciprocal state is one that allows an exemption to an Indiana resident who purchases an RV or a cargo trailer to be registered/titled in Indiana.

Dealers must collect the Indiana sales tax on sales to a **nonresident** of Indiana if registering or titling in one of the following nonreciprocal states/countries:

Arizona	North Carolina
California	South Carolina
Florida	Canada
Hawaii	Mexico
Massachusetts	All Other Countries
Michigan	

(*Emphasis in original*.)

In this case, Taxpayers registered their trailer in California, which does not allow an exemption to Indiana residents who have purchased a similar trailer in California for registration/titling in Indiana. Since California does not offer a reciprocal exemption, as required by IC § 6-2.5-5-39(c), Indiana dealers are required to collect sales tax on nonresidents purchasing a trailer for registration in California. Although the dealer in this case incorrectly failed to collect tax, Taxpayers are still responsible for paying use tax for their purchase. While double taxation is an issue worth considering, the Indiana Department of Revenue properly assessed Indiana use tax in this case, on a transaction occurring inside the State of Indiana. Taxpayers' remedy for paying use tax on their trailer in two different states must be obtained elsewhere.

FINDING

Taxpayers' protest is respectfully denied.

April 14, 2020

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